

REMARKS/ARGUMENTS

In the Office Action dated November 16, 2007, claims 22-28 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-28 were provisionally rejected under the doctrine of obviousness-type double patenting over claims 1-44 of copending Application No. 10/730,897. Claims 1-4, 8-11, 15-18, and 22-25 were rejected under 35 U.S.C. § 102(b) as being anticipated by Dumarot et al., U.S. Patent No. RE38865 ("Dumarot"). Claims 5, 6, 12, 13, 19, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dumarot in view of Applicant's Admitted Prior Art ("APA"). Claims 7, 14, and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dumarot in view of APA, and further in view of an article by Bowker, "Superior app management with JMX", JavaWorld, 6/8/2001 ("Bowker"). Claim 26 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Dumarot in view of Bowker. Claims 28 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dumarot in view of Bowker, and further in view of APA.

Claims 1-28 are now pending in this application. Claims 3, 10, 17, and 24 have been canceled. Claim 22 has been amended in order to overcome the rejection under 35 U.S.C. § 101, and claims 1, 8, 15, and 22 have been amended in order to clarify the subject matter that the Applicant considers to be the invention. No new matter has been added.

Regarding the provisional double patenting rejection, as this rejection is currently provisional, if copending Application No. 10/730,897 is allowed prior to allowance of the present application, the Applicant will file a Terminal Disclaimer in the present application.

The Applicant respectfully submits that claims 1-4, 8-11, 15-18, and 22-25 are not anticipated by Dumarot. Dumarot discloses a method of optimizing the operation of a computer system in running application programs in accordance with system capabilities, user preferences and configuration parameters of the application program. Dumarot discloses modifying entries in a configuration file or database. While these entries may be modified while the application being optimized is running, Dumarot does not disclose that the modifications take effect in real-time. Rather, Dumarot only discloses that the configuration file or database is used on startup of the application. This is contrary to the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time. Thus, these claims require that the modifications to the values of the parameters of the deployed application take effect in real-time and that this effect is also displayed in real-time. Dumarot only discloses modifying values in a file that is read by the application upon startup of the application.

The only explicit disclosure in Dumarot of when modifications take effect is that the configuration file or database is used on startup of the application. In particular, Dumarot explicitly discloses "Such a file as the configuration file 141 is typically read by an application when the application starts and controls various performance characteristics of a particular application." This is further shown by col. 6, lines 9-19, at which Dumarot discloses:

In step 325, the optimizer 136 reads user input. For example, the user may enter text or data at the keyboard 40 (or with various input devices 46, 48, 50, or by voice input using audio input device 51) that specifies a level of optimization 326. This level of optimization may control which of the application settings 420 are used to optimize the application in step 330 or optimize the system 12 in step 340. A user wishing to have maximum performance may, for example, sacrifice graphic quality controlled in applications settings 420, that are generally read upon invocation of application 138. (emphasis added)

Thus, this section also discloses that the configuration file or database is used on startup of the application.

The other sections cited by the Examiner do not explicitly state when the application is configured. For example, at col. 3, lines 28-29, Dumarot discloses that “This invention permits users to conveniently optimize software running on a computer.” This does not explicitly disclose that modifications to parameters being used by the application take effect while the application is running and functional. Likewise, at col. 4, lines 49-50, Dumarot discloses that “Various user applications 138 run on the remote or local computer.” Again, this does not explicitly disclose that modifications to parameters being used by the application take effect while the application is running and functional. At col. 3, lines 25-27, Dumarot discloses “Yet another object of this invention is to provide a method and system for effectively increasing the apparent speed of a computer based on results obtained by dynamically monitoring system behavior and performance.” This discloses dynamic monitoring, but does not explicitly disclose that modifications to parameters being used by the application take effect while the application is running and

functional. At col. 4, lines 47-50, Dumarot discloses “The optimizer program contains or accesses a dynamic monitor 137 of system and application activity.” This discloses dynamic monitoring, but does not explicitly disclose that modifications to parameters being used by the application take effect while the application is running and functional. At col. 5, lines 26-29, Dumarot discloses “The optimizer program 136 may scan a row or record 430 of database 400 to optimize a single, particular application, or it might join the results of numerous rows to optimize for a set of concurrently running applications designated by identifiers 410.” This discloses manipulating entries in a database, but does not explicitly disclose that modifications to parameters being used by the application take effect while the application is running and functional. At col. 3, lines 40-52, Dumarot discloses that changes to the application parameters affect the application, but it does not explicitly disclose that modifications to parameters being used by the application take effect while the application is running and functional. At col. 4, lines 43-59, Dumarot discloses an optimization table, but does not disclose when this table is read by the application. This section discloses dynamic monitoring of system and application activity, but monitoring activity is not the same as modifying parameters. Thus, this section does not explicitly disclose that modifications to parameters being used by the application take effect while the application is running and functional. Likewise, at col. 5, lines 37-59, Dumarot further discloses gathering relevant system information, but gathering information is not the same as modifying parameters. Thus, this section does not explicitly disclose that modifications to parameters being used by the application take effect while the application is running and functional.

In addition, the optimizer GUI disclosed by Dumarot does not display a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time. The optimizer GUI displays a number of rules and icons which affect parameters of the application. However, at col. 7, lines 1-8, Dumarot discloses “For example, a graphical depiction of a slider may be used to control the program optimization level by causing the optimizer 136 to optimize 330 the application by writing discrete records in an application configuration file 141 stored on disk. See step 330. Such a file as the configuration file 141 is typically read by an application when the application starts and controls various performance characteristics of a particular application.” Thus, the optimizer GUI only directly modifies entries in the configuration file and these modifications are not applied to the application until the application starts up.

In summary, the only explicit disclosure in Dumarot of when modifications to parameters used by an application take effect is when the configuration file or database is read at startup of the application. Thus, Dumarot does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time.

Therefore, claims 1, 8, 15, and 22, and claims 2-4, 9-11, 16-18, and 23-25, which depend therefrom, are not anticipated by Dumarot.

The Applicant respectfully submits that claims 5, 6, 12, 13, 19, and 20 are not unpatentable over Dumarot in view of APA because even if Dumarot and APA were combined as suggested by the Examiner, the result still would not disclose or suggest the requirements of the claims. As discussed in relation to claims 1, 8, 15, and 22, from which claims 5, 6, 12, 13, 19, and 20 depend, Dumarot does not disclose or suggest does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time. The subject matter identified by the Examiner as APA likewise does not disclose these requirements of the claims. Thus, even if Dumarot and APA were combined as suggested by the Examiner, the resulting combination still does not disclose or suggest does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time.

Therefore, claims 5, 6, 12, 13, 19, and 20 are not unpatentable over Dumarot in view of APA.

The Applicant respectfully submits that claims 7, 14, and 21 are not unpatentable over Dumarot in view of APA, and further in view of Bowker, because even if Dumarot, APA, and Bowker were combined as suggested by the Examiner, the result still would

not disclose or suggest the requirements of the claims. As discussed in relation to claims 1, 8, 15, and 22, from which claims 7, 14, and 21 depend, Dumarot does not disclose or suggest does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time. Likewise, APA and Bowker do not disclose these requirements of the claims. Thus, even if Dumarot, APA, and Bowker were combined as suggested by the Examiner, the resulting combination still does not disclose or suggest does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time.

Therefore, claims 7, 14, and 21 are not unpatentable over Dumarot in view of APA, and further in view of Bowker.

The Applicant respectfully submits that claim 26 is not unpatentable over Dumarot in view of Bowker, because even if Dumarot and Bowker were combined as suggested by the Examiner, the result still would not disclose or suggest the requirements of the claims. As discussed in relation to claims 1, 8, 15, and 22, from which claim 26 depends, Dumarot do not disclose or suggest does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified

parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time. Likewise, Bowker does not disclose these requirements of the claims. Thus, even if Dumarot and Bowker were combined as suggested by the Examiner, the resulting combination still does not disclose or suggest does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time.

Therefore, claim 26 is not unpatentable over Dumarot in view of Bowker.

The Applicant respectfully submits that claims 26 and 28 are not unpatentable over Dumarot in view of Bowker and further in view of APA, because even if Dumarot, Bowker, and APA were combined as suggested by the Examiner, the result still would not disclose or suggest the requirements of the claims. As discussed in relation to claims 1, 8, 15, and 22, from which claims 26 and 28 depend, Dumarot do not disclose or suggest does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time. Likewise, Bowker and APA do not disclose these requirements of the claims. Thus, even if

Dumarot, Bowker, and APA were combined as suggested by the Examiner, the resulting combination still does not disclose or suggest does not disclose the requirements of claims 1, 11, 22, and 28 for tuning the deployed application using the received specified parameter values by modifying the values of the parameters being used by the deployed application and then displaying a measurement of an effect of the modification of the values of the parameters of the deployed application on system and application performance in real time.

Therefore, claims 26 and 28 are not unpatentable over Dumarot in view of Bowker and further in view of APA.

Each of the claims now pending in this application is believed to be in condition for allowance. Accordingly, favorable reconsideration of this case and early issuance of the Notice of Allowance are respectfully requested.

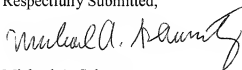
Additional Fees:

The Commissioner is hereby authorized to charge any insufficient fees or credit any overpayment associated with this application to Deposit Account No. 50-4545 (19111.0118).

Conclusion

In view of the foregoing, all of the Examiner's rejections to the claims are believed to be overcome. The Applicants respectfully request reconsideration and issuance of a Notice of Allowance for all the claims remaining in the application. Should the Examiner feel further communication would facilitate prosecution, he is urged to call the undersigned at the phone number provided below.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Michael A. Schwartz".

Michael A. Schwartz
Reg. No. 40,161

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Hanify & King, P.C.
1875 K Street, N.W., Suite 707
Washington, DC 20006
(202) 719-1080 Tel.
(202) 719-1090 Fax